CASE No. E2018-01004-COA-R3-CV

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION AT KNOXVILLE

John Thomas Ammons
Appellant / Plaintiff

v.

William C. Longworth et al.
Appellees / Defendants

On Appeal from the Knox County Chancery Court
(Knox County Chancery Court No. 178387-3)

BRIEF OF THE APPELLANT

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Oral Argument Requested

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2. Whether the initial or original judgment in this cause was a final judgment.

3. Whether the mere passage of time could convert a non-final judgment into a final judgment.

4. Whether the trial court was correct in calling the lien that it attempted to impose a "judgment lien."

5. Whether a trial court can create a valid enforceable lien on real estate, or against a given person's interest in real estate, without first determining whether the interest in real estate actually exists, whether the given person actually has an interest in the real estate, and whether the lien affects both of the defendants or only affects one of the defendants; and whether the judgment in which the trial court attempted to create the lien can be a final judgment before those things are determined.

6. Whether the trial court can create a valid lien on real estate without stating the legal description of the real estate that is subject to the lien, and whether the judgment attempting to create the lien can be a final judgment before that legal description is stated.

7. Where a trial court attempts to impose a judge-created lien on real estate, or on a given person's interest in real estate, as an integral part of a judgment, whether the judgment can be a final judgment at any point before the lien has been designated with sufficient specificity as to be enforceable.

8. Whether the lien that the trial court attempted to create was a judge-created lien, rather than a statutory "judgment lien," and if so whether the judge-created lien should have been referred to as an equitable lien instead of a "judgment lien."

9. Whether the Court should declare an equitable lien in favor of the Plaintiff on certain real property known as the Wilnoty Drive property, and in particular, on the interest of the Defendant William C. Longworth in the said property.

10. Whether the Defendant Tamara Longworth has any ownership interest in the Wilnoty Drive property.

11. Whether the original judgment in this case was an ordinary personal money judgement against the Defendant Tamara Longworth, which can be executed or enforced by garnishment or any other means allowed by law.

12. If the original judgment entered in this cause was a final judgment, whether the trial court could, six years after the entry of the original judgment, add a condition to the judgment that would preclude garnishment or other means to enforce, execute or collect the judgment.

13. Whether a trial court can add a material provision to a final judgment six years after the entry of the judgment to conform to what the court now states was its "intention," when that "intention" was not stated in the original judgment.

14. Whether a judgment means what it says or what the trial court subsequently states that it intended to say.

15. If the original judgment in this cause is not a final judgment, whether the trial court has discretion, under principles of fundamental fairness and due process, after determining that the Plaintiff lent money to the Defendant, that the Defendant agreed and acknowledged that the money was lent, and that she had promised to repay the loan, to impose a lien against a property interest that does not exist and at the same time to prohibit the Plaintiff from enforcing the judgment by garnishment or other means, with the result that the judgment is illusory because it grants no relief whatsoever.

16. Whether a judgment that is vague and self-contradictory in its terms can be said to be an enforceable or final judgment.

Statement of the Case

The Plaintiff, John Thomas Ammons, filed the Complaint against the Defendants, his daughter, Tamara Longworth and her husband, William C. Longworth, on Aug. 4, 2010, alleging that he had loaned his daughter and her husband $193,000 to enable them to pay off various debts including the mortgage on their home on Wilnoty Drive in Knoxville. The Complaint further alleged that the Defendants agreed to repay the loan upon the sale of the Wilnoty Drive home. The Complaint then alleged that the home was placed on the market but did not sell and that by agreement with the Plaintiff, the Defendants began renting the home and received rental income of $1,250 per month, but failed to pay the Plaintiff

any of the rent proceeds. The Complaint further alleged that the Defendants acknowledged the debt but then began avoiding his calls and efforts to discuss the issue and that he feared that they would sell or encumber the property and refuse to pay him. The Complaint then alleged that the Defendants had failed and refused to repay the loan as agreed. In his request for relief, the Plaintiff asked for judgment in the amount of $193,000, a "judgment lien," and general relief. Complaint, (1TR 1-3)

The Defendants filed an Answer denying any agreement to repay and denying that they owed the Plaintiff any monies. (Answer, 1TR 7-8) The trial court overruled the Defendants' Motion for Summary Judgment (1TR 10; Order, 1TR 148), and the case proceeded to trial.

The case was tried on Sept. 2, 2011, at the conclusion of which the trial court orally announced Findings of Fact and Conclusions of Law. On Oct. 26, 2011, the trial court entered a Judgment in which it stated that the orally rendered Findings of Fact and Conclusions of Law (Memorandum Opinion) were "adopted, ratified and confirmed as and for the orders of this Court." (3TR 295) In that manner, the orally rendered opinion became the order of the court. In the Memorandum Opinion the trial court, after first stating that "as to Mr. Longworth, the Court finds that the parties have not proved their case, and the case against Mr. Longworth is dismissed"[1] [3TR 301], found that the Plaintiff had loaned his daughter, Tamara

[11] In the brief filed in support of the Motion filed in this Court, we stated that the trial court did not state that the action against Mr. Longworth had been dismissed. Our statement to that effect was incorrect.

Longworth, $193,000 and that "Mrs. Longworth, you have been unjustly enriched if that money is not returned to Mr. Ammons." (3TR 302) The trial court further found that Mrs. Longworth "acknowledges that this was the debt, acknowledges that she had agreed to repay it and that it would be repaid." Memorandum Opinion, 3TR 300 The Court further stated that "the Court believes that a judgment against Mrs. Longworth should go down in the amount of $193,000, secured by a judgment lien against the Wilnoty Drive house." (3TR 302) The trial court then stated that "I'm not today going to order a sale of that house. I'll let the parties try to work that out, how that will be executed upon or sold; that the Court believes that a judgment in that amount, secured by that house and that house only." (3TR 302-303) The trial court then stated, "So, the $193,000 is solely owned by a judgment lien against the Wilnoty Drive house, and I'll let you counsel decide how you're going to enforce that judgment lien. The costs in this cause to be taxed to Mrs. Longworth. And that is the judgment of the Court." (3TR 303)

The Court and counsel for the Defendants then had the following colloquy:

> Mr. Jenkins (counsel for the Defendants): Your honor, for clarification, how is this done? Does this affect Mr. Longworth –
>
> The Court: Good question. I'll let you guys work that out.
>
> Mr. Jenkins: – about the ownership
>
> The Court: That gets into questions of tenancy by the entireties and a whole lot of other questions that I know I'm not ready, willing or able to answer today.
>
> When we get to the point of – if the Court has to intervene further, to figure out how to enforce this judgment money, we'll take that up at that time.

> Right now, I'm saying there's $193,000 ~~possession~~ judgment against Mrs. Longworth that's secured by her interest in the home. Whether that's an undecided interest or half interest, I don't know. I'll let you guys work that out, or we'll take that up another day, all right?
>
> Ms. McCoy: Thank you, your Honor.
>
> (Court adjourned.)
>
> (3TR 295, 303-304)

On Oct. 17, 2011, the Plaintiff filed a Motion to Alter or Amend Judgment, alleging that Mr. Longworth had been unjustly enriched and asking the Court to alter or amend the judgment by also granting judgment against Mr. Longworth, with the judgment to be secured by both of the Defendants' interests in the Wilnoty Drive property. 2TR 164-166. (This motion was apparently filed before the judgment had been entered.) The Court entered an order overruling the Plaintiff's Motion to Alter or Amend on March 9, 2012. 3TR 307

The Plaintiff then filed a Motion for Order of Sale of Real Property followed by an "Abstract of Judgment and Motion for Order of Sale of Real Property." By these motions, the Plaintiff asked the Court to order the sale of Tamara Longworth's interest in the Wilnoty Drive property. (3TR 309; 3TR 314)

The Defendants (both of them) then filed a "Response to Motion to Sell" in which they asked the trial court to deny the Motion to Sell, stating as follows:

> 17. Mr. Longworth owned the Wilnoty Drive property prior to and at the time of marriage. He continues to be the sole owner listed on the Deed on file in the Register's office. At no time has Mrs. Longworth been on the Deed for Wilnoty. (3TR 317)

The Defendants further stated in their jointly-filed Response to Motion to Sell as follows:

8. Assuming that Mrs. Longworth does have an ownership interest in Wilnoty property, that interest is as a Tennent by the Entirety [sic] and the Plaintiff's proper and equitable remedy is to hope the Longworths' divorce or to wait for Mr. Longworth to "shuffle off this mortal coil," thereby separating his tenancy ownership interest in the property form Mrs. Longworth. [sic] (3TR 317-318)

The motion to sell real estate was heard on Oct. 25, 2016. At that hearing, Counsel for the Defendants stated, among other things, that the trial court had held that "Ms. Longworth was solely responsible for the repayment of the loan, and that was secured by her interest in the Wilnoty home." (Transcript, 3TR 345-346)

Counsel for the Defendants then stated as follows:

> Mr. Jenkins: And the Longworths owned the home as tenants by the entirety. And there's really only two ways to get her interest without disrupting his interest, and that's if they divorce or if he dies before she does.... so I don't think there's a way to separate their ownership interest in a way that does not disturb Mr. Longworth's ownership interest in the home.
>
> (Transcript, 3TR 346)

The Chancellor then directed the following question to Counsel for the Plaintiff: "Mr. Dunn, its tenancy by the entirety. How can I – how can I order it sold without Mr. Longworth?"

Counsel for the Plaintiff replied as follows:

> Mr. Dunn: Well, I'll go right to the fundamental issue. This is not a tenancy by the entirety.... This property was at all times in the name of Mr. Longworth. That may or may not have been clear in the evidence at the trial of this case.
>
> (Transcript, 3TR 347)

The colloquy continued as follows:

> The Court: It's a creation of law. How did they – how did Mr. and Mrs. Longworth acquire this property?

> Mr. Dunn: Well, again, I don't know that the evidence at court addressed that....
>
> (Transcript, 3TR 347)

After further colloquy, the Chancellor continued as follows:

> The Court: ...I mean, you've got two people who owned a piece of property. I don't recall, as I sit here today, how they acquired that property.... So I guess the question comes down to whether or not this is a tenancy by the entireties. And I don't know if I need further proof on that question....
>
> Now, if there's a question regarding whether or not this is tenants in common or tenants by the entireties, then I guess we have to look into that. But because this is a property that's owned by a husband and wife I think, in the absence of proof to the contrary, I have to assume that it was held in tenancy by the entireties....
>
> The Court: I'm happy to hear more proof or evidence on that question. And if it is tenants in common, then you may be able to enforce your judgment; but if it's tenancy by the entirety, I think Mr. Jenkins was correct. Unless Mr. Longworth were to die or transfer the entirety of the ownership of the property to Mrs. Longworth, I don't see how you could force a sale.
>
> (Transcript, 3TR 349-351)

The Chancellor then concluded as follows: "I'm not going to deny the motion today, I'm going to hold it in abeyance. But I'm going to let you brief what the actual ownership of the property is – whether it's entireties or whether it's joint tenancy of some sort – because I don't think we can answer the questions raised by your motion until we make that determination." (Transcript, 3TR 352) The Chancellor further added as follows: "So I think I'm going to hold your motion in abeyance and let you guys brief that question. And if necessary, we'll take some evidence on it." (Transcript, 3TR 353) The Chancellor then entered an order in which it deferred

ruling on the Motion to allow counsel to file additional authority and argument. (3TR 319)

The Plaintiff then filed an Execution and Garnishment against Tamara Longworth's employer, Knoxville Fine Homes Realty, in which he attempted to levy on her earnings. (3TR 320) The Defendants (both of them) then filed a Motion to Quash in which they asked the Court to quash the attempted garnishment, stating that "This court secured the judgment **only** by **Mrs. Longworth's interest in the property on Wilnoty Drive**..." (emphasis added) (3TR 322) The Defendants further stated that "5. By asking for a GARNISHMENT of Mrs. Longworth's, wages, earnings, and compensation, Plaintiff is seeking to satisfy the judgement from sources other than the Wilnoty property, in direct contravention of this Court's original order." (3TR 322)

The Motion to Quash was heard on Sept. 11, 2017, at which time the Court stated as follows:

> The Court: Perhaps I wasn't clear. Perhaps I wasn't sufficiently clear. I was just rereading it. I thought I was clear. The judgment is secured by her interest in the Wilnoty house, period.... Now, whether I was right or whether I was wrong to do it. My intention was to secure that debt solely and only by her interest in that property....
>
> So, respectfully, I'm going to grant the quashing the garnishment and direct you to seek your recovery as this Court intended when it put down its original judgment, okay?
>
> (3TR 329-330)

The trial court then entered an Order quashing the attempted garnishment. (Order, 3TR 324)

On Jan. 17, 2018, the Plaintiff filed his "Plaintiff's Motion to Alter, Amend, Revise or Reconsider Judgments or Orders" in which he asked the Court to change the previous rulings to grant an equitable lien in favor of the Plaintiff on the Wilnoty Drive property (including Mr. Longworth's interest) and to state that the judgment against Tamara Longworth was an ordinary personal judgment that may be executed by any means allowed by law, including garnishment of her earnings, at least if the equitable lien was not granted. (3TR 361-367) The Plaintiff supported his motion by filing additional evidence as to the ownership of the Wilnoty Drive property, as the court had invited, in the form of the affidavit of title attorney James E. Bondurant, Jr., with a copy of Mr. Longworth's deed to the Wilnoty Property attached as Ex. 1. (Bondurant Affidavit at TR3, 404; Wilnoty Deed, Ex. 1 to the Affidavit, at 3TR 411) (there appear to be two extraneous pages in the record at 3TR 408 and 409) Mr. Bondurant's Affidavit stated as follows:

> The title records show that...the fee simple title to the Wilnoty Drive property was vested solely in William C. Longworth. Tamara D. Longworth was not vested with any ownership interest in the Wilnoty Drive property. She did not have an interest as tenant by the entireties in that property nor did she have any other ownership interest in that property.
>
> (Bondurant Affidavit, 3TR 404-405)

The Defendants filed a "Response to Plaintiff's Motion to Alter or Amend & Motion to Dismiss" and a Brief, contending, among other things, that the underlying order was a final judgment that could not be changed: "In fact, Defendants believe that Plaintiff is using that action a pretext to attack the underlying order in this case, now final for six (6) years." The Defendants also

stated in this "Response" that Tamara Longworth did have some ownership interest in the Wilnoty Drive property, mentioning both the law of tenancy by the entireties and the law of marital property in a divorce case (T.C.A. 36-4-121). The Defendants' Motion further stated "It seems to me, if Mr. Ammons has a complaint, it might be for malpractice against Ms. McCoy [his former attorney]. (Motion, 4TR 418-423, Brief, 4TR 425-433)

The Plaintiff filed a Reply Brief contending that the "underlying order" was not a final judgment and that the Defendants were incorrect in claiming that Tamara Longworth had any ownership interest in the Wilnoty Drive property, specifically, stating that "[t]he divorce statutes are extremely clear that the question of 'marital property' (whether denominated as commingling or transmutation or otherwise) is 'for the sole purpose of dividing assets upon divorce or legal separation and for no other purpose (quoting T.C.A. 16-4-121) and that "[t]he divorce statutes are thus completely and totally irrelevant in the case at bar." (4TR 482-487)

The Plaintiff then filed a Motion asking the trial court to allow the parties thirty days to submit any additional evidence as to Tamara Longworth's ownership interest in the Wilnoty Drive property and to then decide what interest, if any, Tamara Longworth had in that property. The Motion further requested the court to hold its decision on the Plaintiff's "Motion to Alter, Amend, Revise or Reconsider" in abeyance until the Court had determined what interest, if any, that Tamara Longworth had in the Wilnoty Drive property. Motion, 3TR 489

Then, without ruling on the Plaintiff's last-filed motion, the Chancellor entered an order on May 4, 2018, denying the Plaintiff's Motion to Alter, Amend, Revise or Reconsider Judgments or Orders. In the said Order, the Chancellor stated that the motion was "filed presumably pursuant to TRCP Rule 60.02," that the Plaintiff seeks to have the Court revise or reconsider its Oct. 26, 2011, ruling, that "this was a Final Order, appealable as of that day," that Rule 60 allows a motion to be filed within "a reasonable time," and that "a motion filed roughly seven and a half years after the entry of the judgment does not qualify as reasonable." (Order, 4TR 492-93)

The Plaintiff then filed a Notice of Appeal on June 1, 2018, stating the he sought review of the order entered on or about May 4, 2018, and also the orders entered on or about Oct. 26, 2011, Nov. 16, 2016, and Dec. 20, 2017. (4TR 497)

In this Court, the Plaintiff filed "Plaintiff/Appellant's Motion to Dismiss Appeal or to Suspend the Finality Requirement of T.R.A.P. Rule 3 to Allow the Appeal to Proceed Without Considering Either the Question of the Finality or the Exceptions to the Finality Doctrine." By this Motion the Plaintiff requested the Court to either dismiss the appeal on grounds that the order appealed from was not a final judgment, or to suspend the finality requirement to allow the appeal to proceed even though it was not a final judgment. Such a ruling, the Plaintiff argued, would obviate the need to consider the question of whether the immediate order appealed from was a final judgment. In his brief accompanying this Motion the Plaintiff stated that one question in the appeal would be whether the original judgment was

a final judgment and whether it could be changed. See Plaintiff's Brief in Support of Motion, at p. 4, 8, 16) For example, the Plaintiff stated as follows:

> The Plaintiff simply seeks the opportunity to appeal the question of whether the original judgment was a final judgment, and if it is determined that it is not a final judgment, the opportunity to either modify the original judgment to impose an equitable lien on the Wilnoty Drive property or to allow him to execute the judgment by garnishment or otherwise. (Plaintiff's Brief in Support of Motion, p. 16)

The Defendants did not file a response to this Motion. The Court then denied the Motion by order entered on Sept. 20, 2018, Per Curiam, stating that the motion was "not well-taken as both the judgment entered on October 26, 2011, and the order entered on May 4, 2018, were final appealable judgments for purposes of Rule 3." The Court further stated that "The ancillary matters relating to the enforcement or collection of the judgment do not affect finality. As such the motion is DENIED." (This Court's Order entered Sept. 20, 2018)

Statement of Facts

One day in 2009, ten years after he retired as a federal firearms inspector, Tom Ammons, the Plaintiff, got a call from his daughter, Tamara Longworth. 2TR 173 She was "in tears, sobbing" and telling her father that the people who were buying their house on Wilnoty Drive had backed out of the contract and that "they were going to lose everything." 2TR 174, 227-228 Tamara and her husband, William C. Longworth, the other Defendant, had built a new home just when the economy started to go downhill. Mr. Ammons had advised against building the new home, but his daughter and her husband did so anyway, telling him that "they had prayed on this and they felt like that God had answered their prayer and that they should

go forward and build this home." 2TR 174-175 By the time she called her father in tears, the new house was complete and the construction loan was due. Mr. Ammons' understanding was that if they were not able to close on the construction loan to get the home loan, that they were going to lose the home. 2TR 175 Mr. Ammons had tried to help them in any way that he could by doing work on their new home, for example making expenditures, painting the interior, picking up the paint, putting wire on the front of the house in preparation for the stone work, erecting scaffolding, stuccoing the house, digging a trench around the back yard for the invisible fence, and loaning them tools. His work on their new house was voluntary; he did not ask for or expect payment for his work. 2TR 175-177

Tamara had been twelve years old when her mother left her and her father. Mr. Ammons explained that Tamara's mother got involved with a "so-called friend" and "basically did not want our daughter; I did." Because he had "tried to be both father and mother, I thought that we had a relationship that was second to none." He further noted, "This has been like a nightmare." 2TR 177

When Tamara called in tears, Mr. Ammons told her that "we would work it out." He told her that "I would loan them the money with the stipulation that when the house did sell, that they would repay the loan at that time...." Not only did Mr. Ammons pay off the Wilnoty Drive home, he paid off their automobiles and their credit cards in order for them to "have a clear slate to qualify for the loan on their new home." 2TR 177-178

Mr. Ammons had had a serious motorcycle accident, and at that time he had added his daughter to a bank with the understanding that she was to access the account only if he were incapacitated. 2TR 179 He was in the hospital for seven weeks after the motorcycle accident. Mr. Ammons testified that he trusted his daughter when he put her name on that account and that she had never given him any reason to question her trust: "...I just thought we had a wonderful relationship." 2TR 180

The discussion in which Mr. Ammons offered to loan Tamara and her husband the $193,000 was just between him and Tamara. She accepted his offer immediately, "telling me how when the house sold that they would repay me and how grateful they were, how thankful they were." He testified that he didn't have any doubt that he would be repaid. 2TR 181

On Jan. 6, 2009, Mr. Ammons obtained a check from the Y-12 Federal Credit Union payable to himself and Tamara in the amount of $193,000 and gave it to his daughter. 2TR 183, Ex. 1 Three days later his daughter came to him again and requested that he sign a "gift letter." Mr. Ammons signed the "gift letter" certifying to the lender that "We have given or will give the sum of $193,000 as a gift to William C. Longworth towards the purchase of the property located at 1619 Nicholas View Ln, Knoxville TN." 2TR 200, 203-204, Ex. 7 At the time that Mr. Ammons signed the "gift letter" Tamara "reiterated quite strongly how they knew that they were borrowing money from me, that they would pay me back, pay the entire loan when the house sold, and made it very clear that this was to satisfy the

lending institution." Mr. Ammons testified that he did not feel like he was trying to "get by" the lending institution because there were no monthly payments on the loan, but instead the agreement was that the loan was to be repaid only when the house was sold. 2TR 204-205

But in spite of their expectation that the house would sell soon, it didn't. That being the case, Mr. Ammons had another discussion with his daughter: "let's get the home cleaned up, cleaned out, and get it on the market to rent. At least get some money coming in." 2TR 182 Mr. Ammons helped Tamara and her husband get the house cleaned up, including hauling in mulch at no expense, helping them put the mulch on the ground, and pressure washing the driveway himself to give the property more curb appeal. Tamara and her husband then rented the house to a couple from California. Mr. Ammons requested that the rent money would come to him into an escrow account to bridge the gap until the house sold. 2TR 186-189

But by July of 2009, Tamara and her husband had not repaid anything to Mr. Ammons, even though by that time they had been receiving rent on the house for several months. The monthly rental was $1250 and it was paid every month through the day of trial by the same tenant. Mr. Ammons brought up the subject of payment when his daughter was visiting him one day at his home and her children were in the pool. His daughter got very upset and left with the children. Mr. Ammons then called Mr. Longworth and left him a message. Mr. Longworth called back and offered to pay him $600 out of the $1250 per month that they were getting for rent. But as it turned out Mr. and Mrs. Longworth never paid anything. And Mr.

Ammons was never again able to reach either one of them on the telephone. 2TR 188-195, 242-243

At some point Tamara wrote her father a letter stating "As far as the money – we still intend to pay you back as we agreed to do in the beginning. WE have never wavered on the deal that was made.... We are aware that we owe you the money." 2TR 201, 231-232, 235 Ex. 3, p. 2, 4, Ex. 4 p. 6. (emphasis in original)

After three months, the Longworths took the house off the market, and it remained off the market through the day of trial. 2TR 216-217, 238, 240, 252 Tamara testified that they had a buyer for $185,000 but her father rejected the sale. She also testified that they offered him the deed to the property but he refused to accept it. Both contentions were disputed by Mr. Ammons. 2TR 219, 245-246, 252

Mr. Ammons then employed an attorney who wrote a letter asking for a quitclaim deed to be signed. Tamara replied with a letter from her own attorney challenging Mr. Ammons to produce a signed contract. 2TR 201 Mr. Ammons then filed the lawsuit. During the depositions Tamara contended for the first time that the money had been a gift. 2TR 201

Summary of Argument

The Plaintiff makes two central arguments. The first argument is premised on the fact that the "judgment lien" that the the trial court attempted to impose on the Wilnoty Drive home in its orally rendered memorandum opinion was not a "judgment lien" but was instead a judge-created lien, the creation of which was not finalized in the original judgment. Numerous important terms and issues necessary

to establish the lien were left undecided and undetermined, including how and when the lien would be executed or enforced, who the house was owned by, whose interest would be subject to the lien, and whether Mr. Longworth's interest in the house was to be affected. (The original judgment was self-conflicting, with the trial court making four statements that the lien applied to "the house," "that house," or "the Wilnoty drive house" and one statement that it would apply to "her interest in the home." The original judgment include a legal description of the premises that were supposed to be subject to the lien. The trial court left these issues, each of them necessary to have a valid and enforceable lien, undecided. For example, after the trial court announced the lien, the Defendants' attorney asked the question, "Does this affect Mr. Longworth" and the trial court answered, "Good question. I'll let you guys work that out." The trial court stated moments later "Whether that's an undecided interest or half interest, I don't know. I'll let you guys work that out, or we'll take that up another day, all right?" 3TR 295, 303-304 The Plaintiff argues that with these important questions about the attempted lien undecided, the judgment where the trial court attempted to create the lien could not be a final judgment, but instead was incomplete, leaving something else for the trial court to do in creating the lien. We argue that this is not merely enforcing a lien or collecting a judgment, but is the creation and definition of the lien, which is a crucial element of a judgment that imposes a judge-created lien.

The trial court made it very clear that it intended to revisit all of those questions in a later ruling, for example, by stating that there were "a whole lot of other

questions that I know I'm not ready, willing or able to answer today." 3TR 295, 303-304 There was no evidence before the court at the time of the original judgment as to who owned the property, that is, whether it was owned by both Mr. and Mrs. Longworth, or only one or the other. The trial court invited additional evidence on this subject, and the parties did submit additional evidence, which demonstrates that Mrs. Longworth has no ownership interest in the property whatsoever, and that it is owned by Mr. Longworth and Mr. Longworth alone. The result is that if the lien is limited to Mrs. Longworth's interest in the property the lien is either worthless or non-existent. But if it is true that the original judgment was not a final judgment, the Court would be free to impose an equitable lien on the property as a whole today, including both Mr. and Mrs. Longworth's interests in the home, with the result that the lien that the trial court attempted to impose would not be illusory but would give real relief. This would be entirely appropriate because at least most of the $193,000 that the Plaintiff loaned to Mrs. Longworth went to pay off the mortgage on Mr. Longworth's Wilnoty Drive property, and he was unjustly enriched just the same as Mrs. Longworth was, if not more. This argument is complicated by the fact that this Court has somehow already ruled that the original judgment was a final judgment, thus deciding one of the two major issues in the case without benefit of briefing and argument. The Plaintiff asks the Court to revisit this ruling after briefing and argument.

The Plaintiff's second argument is that if the original judgment was indeed a final judgment, then the trial court's "no garnishment" condition, which the trial

court attempted to add six years after the original judgment was entered, is invalid and ineffective. The original judgment granted the Plaintiff a judgment in the amount of $193,000 after first determining that the Plaintiff had loaned Mrs. Longworth $193,000 and that she had agreed to repay it, indeed, that she admitted in writing that it was a loan and that she had agreed to repay it. The court stated the judgment as follows: "...the Court believes that a judgment against Mrs. Longworth should go down in the amount of $193,000, secured by a judgment lien against the Wilnoty Drive house." 3TR 302 The court later referred to a "judgment in that amount, secured by that house and that house only" and that "the $193,000 is solely owned by a judgment lien against the Wilnoty Drive house..." 3TR 303 But although the trial court attempted to grant the plaintiff a lien, or some "security" in the Wilnoty Drive property, the court did not mention any prohibition against garnishment or other means of collection of the judgment. But when the Plaintiff later attempted garnishment, the court ruled that the Plaintiff could not enforce the judgment by garnishment or by any other means besides execution against Mrs. Longworth's interest in the Wilnoty Drive house. In making this ruling, the Court stated "Perhaps I wasn't clear. Perhaps I wasn't sufficiently clear.... My *intention* was to secure that debt solely and only by her interest in that property.... I'm going to grant the quashing of the garnishment and direct you to seek your recovery as this Court *intended* when it put down its original judgment, okay?" 3TR 329-330 (emphasis added) The Plaintiff argues that the original judgment must be measured

by what it actually said, rather than what the court states, six years later, had been its "intention."

If this Court does not grant relief on either one of these major arguments, the result will be an illusory judgment, that is, a judgment in name only, with no means of enforcement.

Argument

1. Standard of Review

This appeal of this non-jury action does not question any of the trial court's factual findings. The issues raised on appeal are either purely legal questions or possibly in some cases the application of law to facts found by the trial court. The standard of review to be applied in this case is therefore de novo with no presumption of correctness. *Fields v. State*, 40 S.W.3d 450, 457 (Tenn. 2001), *State v. Yeargan*, 958 S.W.2d 626, 634 (Tenn. 1997), *Hawks v. City of Westmoreland*, 960 S.W.2d 10, 15 (Tenn. 1997) In the event the Court determines that there is some question as to the trial court's findings of fact, the standard of review would be that stated in Rule 13 of the Tennessee Rules of Civil Procedure: "de novo upon the record of the trial court, accompanied by a presumption of correctness of the finding, unless the preponderance of evidence is otherwise."

2. The Court's Ruling on the Plaintiff's Motion Filed in This Court

The Plaintiff filed a motion in this Court asking the Court to either rule that the trial court's most recent order was not a final judgment or to suspend the finality requirement to allow the appeal to proceed even if it was not a final judgment. In the Plaintiff's Brief accompanying that motion, the Plaintiff stated that one

question for review in the appeal would be whether the original judgment was a final judgment and whether it could be modified. (Plaintiff's Brief in Support of Motion, p. 16) In this Court's Order denying the motion, the Court not only denied the motion, but also stated that both the recent order and the original judgment were final appealable judgments. The Court further stated that "The ancillary matters relating to the enforcement or collection of the judgment do not impact finality."

By that ruling, the Court appears to have decided one of the questions for review in the appeal without the benefit of briefing. It does not appear that the question was even before the Court. The Plaintiff would respectfully request the Court to reconsider and revisit that ruling in its decision on the merits of this appeal, after briefing and oral argument have been completed.

3. The "Judgment Lien" That the Trial Court Attempted to Impose Was Not a "Judgment Lien"

The key to understanding the issues in this case first lies in the nature of "judgment lien" that the trial court attempted to impose in its orally rendered memorandum opinion, which was then adopted as the Judgment. Although the trial court referred to the attempted lien as a "judgment lien" it was not a "judgment lien." This is clear from four separate aspects of the court's ruling. First, a "judgment lien" is not created by declaration of the court; it is a statutory lien created by operation of law any time a party files a certified copy of any judgment in the office of the register of deeds. T.C.A. 25-5-101 No specific order of the court is required to create it. The statute states as follows:

> ...judgments and decrees...in any court of record...and...in any court of general sessions of this state shall be liens upon the debtor's land from the time a certified copy of the judgment or decree shall be registered in the lien book in the register's office of the county where the land is located.
>
> T.C.A. 25-5-101

It is well-established that "The lien of a judgment is purely statutory and depends on compliance by the judgment creditor with the provisions of Tennessee Code Annotated section 25–5–105." *Andrews v. Fifth Third Bank*, 228 S.W.3d 102, 108 (Tenn. Ct. App. 2007)

Second, the "judgment lien" is a lien "upon the debtor's land," that is, a lien upon *any* land that is owned by the debtor in the county where the judgment is registered. Stated another way, the judgment lien is not limited to or directed at any particular parcel of land. It is effective as to *all* the debtor's land. As mentioned, the court does not declare the "judgment lien" or specify its reach; the "judgment lien" springs into being by operation of law upon the filing of a certified copy of any judgment. The judgment lien statute does not have any mechanism that would allow the trial court to limit the effect of the "judgment lien" to any particular parcel of land.

Third, the existence of an ordinary "judgment lien" would not preclude the Plaintiff from executing the judgment is some other way, for example, by garnishment. Nothing in the judgment lien statute gives the trial court the power to limit the effect of the judgment lien or to prohibit other means of enforcing the judgment. Fourth, a judgment lien does not have any limitation as to when it will be enforced, or any provision where the court could delay enforcement of the lien; it is

effective, and may be enforced, as soon as the certified copy is registered. The trial court in the case at bar, by way of contrast, delayed the enforcement of the lien: "I'm not today going to order a sale of that house. I'll let the parties try to work that out, how that will be executed upon or sold."

We think that this discussion makes it clear that we are dealing with a judge-created lien rather than a statutorily-created "judgment lien." We will add that there were several things about the judge-created lien that were left open, undecided and unresolved, including who owned the property, how and when the lien would be executed, whose interest was subject to the lien, and specifically whether Mr. Longworth's interest in the house would be affected. The orally rendered original judgment was ambiguous as to whose interest was being encumbered, first stating that "the Court believes that a judgment against Mrs. Longworth should go down in the amount of $193,000, *secured by a judgment lien against the Wilnoty Drive house.*" (emphasis added) As mentioned, if this had been a "judgment lien" the Chancellor would not have to specify that the judgment was "secured" by anything and the lien would not be limited to any particular piece of property. At any rate, according to the plain meaning of these words, the lien that the Chancellor was attempting to create was to apply to "the Wilnoty Drive house," that is, to the house as a whole. The Chancellor reiterated this point a few moments later and also stated that the question of how and when the lien would be executed would be left open: "I'm not today going to order a sale of that house. I'll let the parties try to work that out, how that will be executed upon or sold..." Again, the

Chancellor is talking about the sale of "that house" that is, the house as a whole. Finishing the same sentence, the trial court said "...that the Court believes that a judgment in that amount, secured by that house and that house only." (3TR 302-303) The Chancellor, in mentioning that the judgment was "secured by that house and that house only" again appeared to be talking about the house as a whole. Moments later, the Chancellor similarly noted that "the $193,000 is solely owned by a judgment lien against the Wilnoty Drive house, and I'll let you counsel decide how you're going to enforce that judgment lien." With four separate references to the lien being against "the house" or "that house" or "that house only" or "against the Wilnoty Drive house" it is unmistakable that the court was intending to impose a lien on the house as a whole. The fact that "the parties" or "you counsel" were to "try to work out" when and how the lien would be enforced is of course a further indication that we are not dealing with a "judgment lien." A judgment lien does not depend on the involvement or agreement of the parties or any further or subsequent ruling. After making those four separate references, the court stated "The costs in this cause are taxed to Mrs. Longworth. And that is the judgment of the Court." 3TR 303

But with the judgment and lien being thus announced, the attorney for the Defendants asked for a clarification. He asked the question "Does this affect Mr. Longworth...?" The Chancellor's response underscores the fact that the question was left open and undecided: "I'll let you guys work that out." The court added as follows: "That gets into questions of tenancy by the entireties and a whole lot of

other questions that I know I'm not ready, willing or able to answer today." The court further added that "When we get to the point of – if the Court has to intervene further, to figure out how to enforce this judgment money, we'll take that up at that time."

The court then made this further comment: "Right now, I'm saying there's $193,000 ~~possession~~ judgment against Mrs. Longworth that's secured *by her interest in* the home." (emphasis added) That leaves us with four references to the "judgment lien" being placed against "the house" or "that house" or "the Wilnoty Drive house" and one to its being placed against "*her interest* in the home." The court continued: "Whether that's an undecided interest or half interest, I don't know. I'll let you guys work that out, or we'll take that up another day, all right?" And that is where the court left it. Memorandum Opinion, 3TR 295, 303-304

As mentioned, a "judgment lien" is not a judge-created lien and would not depend on the involvement or agreement of the parties or any further or subsequent ruling by the court. A "judgment lien" is created, not by order of the court, but by operation of law simply by the filing of a certified copy of a judgment; similarly, a judgment lien springs into being as soon as the certified copy of the judgment is filed. It does not depend on any subsequent order or action by the court. The trial court's statements made it very clear that several extremely important questions as to the extent and terms of the judge-created lien were left open, undecided and unresolved. First, the sale of the house was delayed, with it being left up to "the parties" or "you counsel" to "work out" how and when the lien would be enforced.

Second, the order was self-conflicting and ambiguous as to whether the lien applied to "the house," "that house" "the Wilnoty drive house" or merely to "her interest in the home." Third, the question of whether Mr. Longworth would be affected was specifically left open, as was the question of whether there was a tenancy by the entireties. It is unmistakably clear that the court intended to revisit all of these questions in a later ruling. There were "a whole lot of other questions" that the trial court was "not ready, willing or able to answer today."

Although numerous things were left open and undecided, one thing was perfectly clear: that the trial court was attempting to create a lien on the house on Wilnoty Drive and that the house would somehow and sometime be sold. This is clear from this portion of the Memorandum Opinion/Judgment: "I'm not today going to order the sale of that house. I'll let the parties try to work that out, how that will be executed or sold...." It was not a question, at least at that point, of whether the house would be sold, but a question of how and when it would be sold. The court left those questions up to "the parties" or "you counsel" with the admonition that "When we get to the point of – if the Court has to intervene further, to figure out how to enforce this judgment money, we'll take that up at that time." Memorandum Opinion, 3TR 295, 303-304

With these matters left undecided, the Plaintiff attempted to enforce the incompletely-defined judge-created lien by filing two motions seeking the judicial sale of Tamara Longworth's interest in the Wilnoty Drive property. The Defendants (both of them) filed a "Response to Motion to Sell" in which they asked the trial

court to "dismiss Plaintiff's MOTION TO SELL." In their jointly-filed response, they contended that the property could not be sold, alleging for the first time that "Mr. Longworth owned the Wilnoty property prior to and at the time of the marriage. He continues to be the sole owner listed on the Deed on file in the Register's office. At no time has Mrs. Longworth been on the Deed for Wilnoty." 3TR 317

The Defendants' Response to Motion to Sell then stated that "This Court has never opined as to what Mrs. Longworth's interest in Wilnoty may or may not be." The Defendants further stated that "By asking for a sale of the Wilnoty property, Plaintiff is seeking to effectively defeat Mr. Longworth's interest in the property, in direct contravention of this Court's original order." The Defendants further stated that "Assuming that Mrs. Longworth does have an ownership interest in Wilnoty property, that interest is as a Tennent by the Entirety and the Plaintiff's proper and equitable remedy is to hope the Longworths' divorce or to wait for Mr. Longworth to 'shuffle off this mortal coil,' thereby separating his tenancy ownership interest in the property from Mrs. Longworth." 3TR 317-318

The Defendants' "Response to Motion to Sell" illustrates several points of interest. First, the Response is filed by both Defendants jointly. If Mr. Longworth had been dismissed from the case by a final judgment, he would not still be participating in the litigation. Second, the claim that "defeating" Mr. Longworth's interest in the property was in "direct contravention of the Court's original order" is an exaggeration. The court clearly stated, in answer to the question "How is this done?" [enforcing the "judgment lien"] and "Does this affect Mr. Longworth?" the

trial court stated "Good question. I'll let you guys work that out." This is very clearly leaving open the possibility that enforcing the lien would affect Mr. Longworth. That question was very obviously left undecided. As mentioned, in contrast to the trial court's one mention that the lien was being imposed on "her interest" in the Wilnoty Drive property, (with this mention being made in comments after the judgment was initially stated), there were four previous statements that the lien would be against "the house" or "that house" or "that house only" or "against the Wilnoty Drive house." With the judgment being thus at least somewhat self-contradictory, it would not appear to be a final judgment. See *S. Bell Tel. & Tel. Co. v. Skaggs*, 241 S.W.2d 126, 134 (Tenn. App. 1951) ("In the first case the Court said: 'This verdict cannot stand. It is self-contradictory. In one breath the jury declares that the accident to the boy was not the result of any negligence on the part of the defendant, and immediately afterwards it declares, by necessary inference, that the contrary is the fact....")

Third, the Defendants' Response to Motion to Sell illustrates the fact that the court had never "opined" as to what Mrs. Longworth's interest might be. That question was likewise left undecided by the original judgment. Fourth, if it is true that "Mr. Longworth owned the property prior to and at the time of the marriage" and that he "continues to be the sole owner listed on the Deed on file at the Register's office" and that "At no time has Mrs. Longworth been on the Deed for Wilnoty" then it would appear that Mrs. Longworth has absolutely no interest in the property whatsoever. See Affidavit of title attorney James E. Bondurant, Jr.,

3TR 404. And if she has no interest in the property whatsoever, any lien on her interest in that property would be worthless, or possibly more accurately, non-existent. Nobody, not even a court, can create a lien on a property interest that does not exist. Fifth, after questioning whether Mrs. Longworth has any interest whatsoever in the Wilnoty Drive property, the Defendants contend that *if* she has an interest, that interest is as a "Tennent by the Entirety" and that the Plaintiff's proper and equitable remedy is to hope the Longworths divorce or to wait for Mr. Longworth to "shuffle off this mortal coil." This further illustrates the fact that the trial court never determined the ownership of the Wilnoty Drive property in the original order. As stated by the court, "That gets into questions of tenancy by the entireties and a whole lot of other questions that I know I'm not ready, willing and able to answer today." The court similarly stated as follows: "Whether that's an undecided interest or half interest, I don't know. I'll let you guys work that out, or we'll take that up another day, all right?" Sixth, if it is true that Mrs. Ammons does not have any interest in the Wilnoty Drive property, and that Mr. Ammons' interest cannot be reached, then there is no lien; the lien that the trial court thought that it was creating was purely illusory.

As mentioned, the lien in question is not a "judgment lien." It is a judge-created lien. We will attempt to better categorize this lien later in this brief, but at the moment we will simply point out that however this judge-created lien may be described, the creation of the lien is not an "ancillary matter relating to the enforcement or collection of the judgment." To the contrary, the creation of the lien

is a very important part of the judgment itself. And with this many important aspects of the judge-created lien left undecided and undetermined, we believe that it is apparent that the order that created, or partially created the lien, is not a final judgment. A final judgment is "one that resolves all the issues in the case, 'leaving nothing else for the trial court to do.'" *In re Estate of Ridley*, 270 S.W.3d 37, 40 (Tenn. 2008) Any order that "adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before entry of a final judgment...." Rule 3, Tennessee Rules of Appellate Procedure and Rule 54.02, Tennessee Rules of Civil Procedure

This Court's Order on our motion filed prior to briefing in this Court stated that "The ancillary matters relating to the enforcement or collection of the judgment do not affect finality." We would not take issue with that statement, but we would suggest that here we are not dealing with merely enforcing a lien or collecting the judgment, but with creating and defining the lien. There was "something else for the trial court to do" in creating the lien. Where the trial court states that it is going to impose a judicially-created lien, we do not believe that there can be a final judgment until the terms of the lien are set, until we know what property the lien attaches to, until we know whether that property actually exists, and until we know whether it affects both parties in the case or only one. Until those things are decided, the judgment is not complete and there is "something else for the trial court to do." A lien "becomes choate or perfected "when the identity of the lienor, the property subject to the lien, and the amount of the lien are established." *U.S. v.*

Pioneer Am. Ins. Co., 374 U.S. 84, 89, 83 S.Ct. 1651, 10 L.Ed.2d 770 (U.S.1963). If the lien in this case had been a consensual or contractual lien, we believe that it would be too vague to be enforceable. See *German v. Ford*, 300 S.W.3d 692, 706 (Tenn. Ct. App. 2009) ("Courts will not enforce a contract that is vague or indefinite or missing essential terms, and will not make a new contract for the parties.") We will add that the orally rendered memorandum opinion, incorporated as the Judgment, did not even state a legal description of the property, as will be further discussed below. It is hard to imagine how a court could create an enforceable lien without utilizing a legal description of the property.

Had the lien in this case been an ordinary "judgment lien" the trial court would have simply issued an order directing the sheriff to sell the property interest in question or, more accurately, to sell any real estate owned by the Defendant in Knox County. But here, when the Plaintiff filed the Motion to Sell, the Defendant objected, contending that the property could not be sold and that the Motion to Sell must be "dismissed." This is a further indication that we are not dealing with a "judgment lien." As mentioned, a judgment lien is not limited to any specific property but is effective as to any property that the defendant may own in the county where the certified copy of the judgment is registered.

4. Further as to Whether the Initial or Original Judgment Was a Final Judgment

It is well-settled that a judge cannot modify the terms of a final judgment by subsequent order. But in the case at bar, the trial court did just that. In the initial judgment the trial court specifically left two questions open: 1) How does the lien

affect Mr. Longworth? ("I'll let you guys work that out.") and 2) What interest did Mrs. Longworth have in the property: ("That gets into questions of tenancy by the entireties and a whole lot of other questions that I know I'm not ready, willing or able to answer today.) The trial court further commented on Mrs. Longworth's interest in the property as follows: "Whether that's an undecided interest or half interest, I don't know. I'll let you guys work that out or we'll take it up another day." 3TR 295, 303-304 The ownership of the property was unknown because there had been no proof on the subject. After the initial or original judgment, even though the trial court had announced the lien, the lien was not yet enforceable.

As anticipated, the trial court did revisit these questions in later hearings. At the Oct. 25, 2016, hearing on the Plaintiff's motions to sell the real estate, it became even more clear that the question of ownership was undecided and that additional proof on the subject would be necessary. The Defendants attorney initiated the discussion by claiming (incorrectly) that the ownership was tenancy by the entireties:

> Mr. Jenkins: And the Longworths owned the house as tenants by the entirety. And there's really only two ways to get her interest without disrupting his interest, and that's if they divorce or if he dies before she does. 3TR 346

The Defendants' attorney made this claim even though up to that point there had been absolutely no proof on the subject. The trial court initially accepted this as fact:

> The Court: Mr. Dunn, it's tenancy by the entirety. How can I – how can I order it sold without Mr. Longworth.

The Plaintiff's attorney then indicated that up to that point there had been no proof on the subject:

> Mr. Dunn: Well, I'll go to the fundamental issue. This is not a tenancy by the entirety.... This property was at all times in the name of Mr. Longworth. That may or may not have been clear in the evidence at the trial of this cause. 3TR 347

This led the court to ask this question:

> The Court: How did they – how did Mr. and Mrs. Longworth acquire the property? 3TR 347

That was a very pertinent question because up to that point there had been no evidence on the subject. The Plaintiff's attorney answered, again indicating that there had been no evidence:

> Mr. Dunn: Well, again, I don't know that the evidence at court addressed that. 3TR 347

Of course, Mr. Dunn was right. There had been absolutely no proof up to that point as to the ownership of the property. The deed had not been put into evidence and nobody had even testified as to the ownership. There was no legal description in the record. Nothing more than the address. We do not believe that a court can create a lien on real estate without at least having a legal description of the property in the record and a record as to who owns the property. To say the least, we think that this well illustrates that the judgment was not a final judgment. The creation of the lien was an important part of the judgment and as of this point, six years after the initial or original judgment, the lien was still inchoate and indeterminate.

The court then stated as follows:

> The Court: ...I mean, you've got two people who owned a piece of property. I don't recall, as I sit here today, how they acquired that property.... Transcript, 3TR 349

There was a very good reason why the court could not recall how they acquired the property, and that reason was that there had been no proof on the subject. The court then stated as follows:

> The Court: So I guess the question comes down to whether or not this is a tenancy by the entireties. And I don't know if I need further proof on that question.... 3TR 349

We think this further points up the fact that we are not dealing with a final judgment. The court clearly indicated that it was attempting to create a lien as part of the judgment, but with so many unknowns and undecided questions, including no proof as to the ownership of the res of the lien and no legal description, it does not appear that this was a final judgment or that it created a valid lien.

The court then stated as follows:

> The Court: Now, if there's a question regarding whether or not this is tenants in common or tenants by the entireties, then I guess we have to look into that. But because this is property that's owned by a husband and wife I think in the absence of proof to the contrary, I have to assume that it was held in tenancy by the entireties. 3TR 350-351

The trial court was simply mistaken, and on a major point, in stating that "this is property that's owned by a husband and wife...." As mentioned, there was no evidence up to that point that the property was "owned by husband and wife." Up to that point, there had been no proof on the subject. And, as will be seen, the court's statement that "this is a property that's owned by a husband and wife" was simply incorrect.

The trial court then stated as follows:

> The Court: I'm happy to hear more proof or evidence on the question. And if it is tenants in common, then you may be able to enforce your judgment; but if it's tenancy by the entirety, I think Mr. Jenkins was correct. Unless Mr. Longworth were to die or transfer the entirety of the ownership of the property to Mrs. Longworth, I don't see how you could force a sale. 3TR 351

Here the trial court seems to be making a further mistake. With no evidence in the record as to what the Defendants' ownership interests might be, the trial court makes the mistake of assuming that the ownership estate is either a tenancy by the entireties or a tenancy in common. But, as it turns out, neither was correct. As will be discussed later, Mrs. Longworth has no ownership interest whatsoever, neither as a tenant by the entireties or as a tenant in common. But, at any rate, with more evidence to be taken as to the subject matter of the lien, we think it should be obvious that we are not dealing with a final judgment. As mentioned above, we are not talking about merely enforcing a lien or a judgment; we are talking about the creation of the lien.

The trial court then further reinforced the lack of finality as follows:

> The Court: But I'm going to let you brief what the actual ownership of the property is – whether it's entireties or whether it's joint tenancy of some sort – because *I don't think we can answer the questions raised by your motion until we make that determination.* 3TR 352 (emphasis added)

The trial court then stated again that it would take new evidence, if necessary:

> The Court: And if necessary, we'll take some evidence on it. 3TR 353

As discussed above, the answering of these questions and the additional evidence was not just a matter of executing a judgment; it was a matter of creating the lien which was supposed to be an integral part of the judgment. Until the lien

was created (and enforceable), the judgment was incomplete and not final. At this point in the proceedings, although the trial court had announced a lien on the Wilnoty Drive real estate, or on Tamara Longworth's interest in the Wilnoty Drive real estate, it was very clear that the lien was not yet enforceable. The court had not yet determined whether Tamara Longworth even had an ownership interest in that property; the court had merely assumed (incorrectly) that the property was owned jointly and that Tamara Longworth's interest was that of a tenant by the entireties. The trial court had made these assumptions without the benefit of any evidence whatsoever. But by the time of this hearing the trial court had begun to recognize that these assumptions might not be correct and had stated that it would need to take additional evidence.

At the next hearing, on Sept. 11, 2017, the trial court added, or attempted to add, a further, and extremely onerous, condition to the original judgment. By way of background, in the original judgment the trial court had ordered that "a judgment against Mrs. Longworth should go down in the amount of $193,000, secured by a judgment lien against the Wilnoty Drive house." 3TR 302 The trial court also referred to a "judgment in that amount, secured by that house and that house only." The trial court further stated that "the $193,000 is solely owned by a judgment lien against the Wilnoty Drive house..." 3TR 303 The trial court then stated that "Right now I'm saying there's a $193,000 judgment against Mrs. Longworth that's secured by her interest in the home." 3TR 304

The upshot of the original judgment thus was that Mr. Ammons was granted a "judgment" against Mrs. Longworth in the amount of $193,000 and that the judgment was "secured" by what the court called a "judgment lien" against "that house and that house only." Although the court stated that the judgment was "secured by" the house, there was no statement, hint, or indication that having this "security" would mean that there was to be any prohibition against garnishment or other means of executing the judgment. Going by the plain meaning of words, unless there is some other special statement or term of an agreement, merely having some "security" in one asset or another would not and does not imply that one is precluded from enforcing the obligation in some other way or that the obligation would be extinguished if the security or collateral prove worthless or non-existent.

But at the Sept. 11, 2017, hearing, the trial court ruled that the judgment could not be enforced by garnishment or by any other means besides execution against Mrs. Longworth's interest in the Wilnoty Drive house. As mentioned, this stipulation had not been stated in the original judgment. The court's words are as follows:

> The Court: Perhaps I wasn't clear. Perhaps I wasn't sufficiently clear. I was just rereading it. I thought I was clear. The judgment is secured by her interest in the Wilnoty house, period.... Now, whether I was right or whether I was wrong to do it. My *intention* was to secure that debt solely and only by her interest in that property....
>
> So, respectfully, I'm going to grant the quashing the garnishment and direct you to seek your recovery as this Court *intended* when it put down its original judgment, okay?

(3TR 329-330) (emphasis added)

The trial court put these statements in terms of its "intention" or what the court "intended." But whatever the court may have "intended," no prohibition against garnishment was stated in the original judgment. This is a brand-new term here introduced for the first time. As mentioned above, if a judgment is final it cannot be changed. It is held that "[a] Court speaks only through its written judgments, duly entered upon its minutes. Therefore, no oral pronouncement is of any effect unless and until made a part of a written judgment duly entered." *Sparkle Laundry & Cleaners, Inc. v. Kelton*, 595 S.W.2d 88, 93 (Tenn. Ct. App. 1979) A court's order speaks for itself and a final judgment is not subject to revision to conform to what the court later states that it "intended." The measure of a court order is what it says, not what the court later states that it "intended." We think that this situation leaves this Court with two alternatives. First, the Court could determine that the initial or original judgment *was not* a final judgment and that it is therefore subject to revision at any time. In that case the court would be free to impose or modify a judicially-created lien and to consider a limitation on means of execution of the judgment. Second, the Court could determine that the original order *was* a final judgment, in which case the attempted lien could not be revised nor could the prohibition against garnishment be added.

In the original judgment, the trial court stated that the judgment was "secured by that house and that house only." Ordinarily, going by the plain meaning of language, having security or collateral for an obligation is something desirable, a good thing, something that is better than a mere unsecured money judgment. We

are not aware of any recognized usage of the term "security" or "secured by" where, if a party is granted "security" in some asset, that he might not also execute the judgment in some other legally permissible way, for example by garnishment. The mere fact that a judgment creditor may have "security" in one asset or another, in the ordinary usage of language, does not mean that the creditor has no resort to other means of enforcing his judgment.

Adding the stipulation that the judgment or obligation is secured by "that house and that house only" does not change this analysis. That simply means that the specified property is the only security, the only collateral. But the addition of that stipulation does not imply that garnishment or other means of execution of the judgment are prohibited.

As mentioned above, the trial court stated "Perhaps I wasn't clear" and "My *intention* was to *secure* the debt solely and only by her interest in the property." If the court had intended to prohibit garnishment or other means of enforcing the judgment, in addition to granting security, that certainly was not clear, not clear at all. In fact, not only was it not clear, it was not stated at all. This is a new term or condition being added to the judgment. As mentioned above, that would seem to mean one of two things: 1) if terms can be added to the original judgment, that would mean that the original judgment was not a final judgment, or conversely 2) if the original judgment was a final judgment, no terms can be added to it, and the court's attempted addition of the "no garnishment" stipulation would be void and of no force and effect.

The colloquy on Oct. 25, 2016, and Sept. 11, 2011, further underscores the fact that the court was not dealing with a "judgment lien." If it had been a "judgment lien" there would be no question of restricting the effect of the lien to one piece of property, because a "judgment lien" is effective as to any and all property that a debtor may have in the county where the certified copy of the judgment is registered. Nor would the existence of a "judgment lien" preclude the judgment creditor from utilizing other means of enforcing his judgment, including executing on any and all real estate that he might find in the county, or garnishment. We are not aware of any authority that having security or collateral would preclude a judgment creditor from resorting to garnishment.

5. Mrs. Longworth Actually Has No Ownership Interest Whatsoever in the Wilnoty Drive Property

At the Oct. 25, 2016, hearing, the trial court was under the mistaken impression that Mr. and Mrs. Longworth were joint owners of the Wilnoty Drive property in some fashion: "I mean, you've got two people who owned a piece of property." Transcript, Oct. 25, 2016, 3TR 349 The court was further under the impression that the only question was whether the Longworths held title as tenants by the entireties or as tenants in common: "So I guess the question comes down to whether or not this is a tenancy by the entireties.... Now, if there's a question regarding whether or not this is tenants in common or tenancy by the entireties, then I guess we have to look into that." 3TR 349-350 As mentioned, the trial court's statements were made without any evidence on the subject being in the record.

The parties then proceeded to submit further proof and briefing as to the ownership of the Wilnoty Drive property, as the trial court had invited. The Plaintiff submitted a copy of the deed for the Wilnoty Drive property and the affidavit of title attorney James. E. Bondurant, Jr. Mr. Bondurant's affidavit was to the effect that the title to the Wilnoty Drive property was vested in Mr. Longworth, and Mr. Longworth alone. According to Mr. Bondurant, Mrs. Longworth had no interest whatsoever in the property, neither as a tenant by the entireties nor as a tenant in common. Affidavit of James E. Bondurant, Jr., 3TR 405

The Defendants then confirmed that Mrs. Longworth has no interest in the property, stating (correctly) that "Mr. Longworth owned the Wilnoty property prior to and at the time of the marriage," that he "continues to be the sole owner listed on the Deed..." and that "At no time has Mrs. Longworth been on the Deed for Wilnoty." (Defendants' Response to Motion to Sell, T.R.3-317)

But the Defendants then sowed confusion into the record by stating, right after they confirmed that Mr. Longworth was the sole owner of the property, that "Assuming that Mrs. Longworth does have an ownership interest in Wilnoty property, that interest is as a Tennent by the Entirety [sic]" and that the Plaintiff's "proper and equitable remedy is to hope the Longworths' divorce or to wait for Mr. Longworth to 'shuffle off this mortal coil,' thereby separating his tenancy ownership in the property from Mrs. Longworth." [sic] Defendants' Response to Motion to Sell, 3TR 317-318

At the Oct. 25, 2016, argument, the Defendants' attorney dropped the idea of "assuming" that Mrs. Longworth had an ownership interest in favor of stating affirmatively that she did have an ownership interest, and that it was that of a tenant by the entireties:

> Mr. Jenkins: And the Longworths owned the home as tenants by the entirety. 3TR 346

Counsel for the Defendants then pushed his attempted point further: "And there's really only two ways to get her interest without disrupting his interest, and that's if they divorce or if he dies before she does...." 3TR 346

The Defendants have thus mixed and blended the law of tenancy by the entireties with the law of divorce. This led to a good bit of confusion below. The law of tenancy by the entireties and divorce law are actually two entirely separate legal concepts. A tenancy by the entireties is formed when there is a *conveyance* of property to a married couple, absent language in the deed indicating a contrary intent. See *Bryant v. Bryant*, 522 S.W.3d 392, 399–401 (Tenn. 2017), *Myers v. Comer*, 144 Tenn. 475, 234 S.W. 325, 326 (Tenn. 1921), *Thomason v. Smith*, 8 Tenn. App. 30, 33 (Tenn. App. 1928), *Griffin v. Prince*, 632 S.W.2d 532, 535 (Tenn. 1982), *overruled on other grounds by In re Estate of Fletcher*, 538 S.W.3d 444 (Tenn. 2017) See also Affidavit of Attorney James E. Bondurant, Jr. ("An interest as tenant by the entireties is created by a conveyance." 3TR 405 In a tenancy by the entireties, upon the death of one spouse, the surviving spouse is deemed to possess the property in fee simple. *Heirs of Ellis v. Estate of Ellis,* 71 S.W.3d 705, 712 (Tenn.2002).

Since the property was in Mr. Longworth's name alone, and there never was a conveyance to Mrs. Longworth, as recognized by the Defendants and as further established by Attorney Bondurant, Mr. and Mrs. Longworth do not hold the Wilnoty Drive property as tenants by the entireties. Now shifting to the field of divorce law, the Tennessee divorce statutes distinguish between separate property and marital property. Separate property is property that a spouse owns at the time of marriage or acquires by gift or inheritance during the marriage. T.C.A. 36-4-121 Marital property is property that is "acquired by either or both spouses during the marriage...." *Id.* The statute specifically provides that "Property shall be considered marital property as defined by [the divorce statutes] *for the sole purpose of dividing assets upon divorce or legal separation and for no other purpose*;" T.C.A. 36-4-121 (emphasis added) Thus, unlike the tenancy by the entireties, the question of whether property is marital property does not depend upon the existence of a conveyance. To the contrary, in a divorce proceeding, property can be deemed marital property even where there is no conveyance. But, as mentioned, the determination that property is "marital property" is "for the sole purpose of dividing assets upon divorce or legal separation and for *no other purpose*." Accordingly, the concept of "marital property has no place in the case at bar because this not a divorce case.

The Defendants wryly suggest that Mr. Ammons "proper and equitable remedy is to hope the Longworths' divorce or to wait for Mr. Longworth to 'shuffle off this mortal coil...." It is actually worse than the Defendants' attorney allowed: since

there is no tenancy by the entireties the property would not pass to Mrs. Longworth by operation of law even if Mr. Longworth were to "shuffle off this mortal coil" before she does. Furthermore, the Wilnoty Drive home itself would not be considered as marital property even if the Longworths were to divorce, and with there being no evidence that divorce is in the offing, the lien that the trial court tried to create seems to be purely illusory, as will be further discussed below.

6. The Unfair and Inequitable Effect of the So-Called "Judgment Lien" Combined with the Subsequently-Added "No Garnishment" Provision

The end result of the trial court's rulings, including the original judgment and the subsequent rulings, was that Mr. Ammons was granted a "judgment" against Mrs. Longworth, with the "judgment" being "secured by" a "judgment lien" against the Wilnoty Drive property, or against Mrs. Longworth's interest in the Wilnoty Drive property, with no determination that Mrs. Longworth had any ownership interest in the property and no evidence as to who owned the property, without any legal description of the property, with the enforcement of the lien delayed to a later date, and with it left indeterminate as to whether the lien would affect Mr. Longworth. The court subsequently (six years later) added a proviso that the judgment could not be enforced by garnishment or any means other than resort to Mrs. Longworth's interest in the property. With Mrs. Longworth not having any interest in the property, the lien is of no value, and with the subsequently-added "no-garnishment provision," Mr. Ammons is left with an illusory judgment, that is, a judgment with no means of collection. This is obviously not a fair result and would defeat principles of fundamental fairness and due process of law. Ordinarily, having

security or a lien against an asset is an advantage, but with a lien like this, it would be much better to have no lien at all.

As we stated above, we believe that this Court might grant relief of two kinds. First, the Court could determine that the original judgment was not a final judgment, and remand for the trial court to complete the creation of the lien, including consideration of whether the lien ought to include Mr. Longworth's interest in the property. After all, if Mr. Longworth is the owner of the property, he has been unjustly enriched just as much, if not more, than Mrs. Longworth. (See discussion below) Second, the Court could determine that the original judgment was a final judgment, with the further ruling that the "no-garnishment" provision was an invalid effort to revise the final judgment, with the result that the Plaintiff might enforce the judgment by garnishment or any other means allowed by law, including garnishment or an ordinary judgment lien pursuant to T.C.A. 25-5-101.

The trial court gave no good reason for the subsequent ruling that garnishment would not be allowed. As discussed above, the original judgment did not preclude garnishment. The "no garnishment" feature of the judgment was added during the Sept. 11, 2017, hearing on the Motion to Quash the garnishment, some six years after the original judgment. The only reason stated by the trial court for disallowing garnishment in the subsequent proceeding was as follows: "My intention was to secure that debt solely and only by her interest in that property.... So, respectfully, I'm going to grant the quashing the garnishment and direct you to seek your recovery as this Court intended when it put down its original judgment, okay?" This

is not a valid reason; in fact, that is no reason at all. In the original judgment, the trial court recognized that Mr. Ammons had loaned Mrs. Longworth the money ["The preponderance of the evidence...shows that this was intended to be and was understood by both of the parties to be a loan from Mr. Ammons to his daughter 3TR 301] and that she promised to repay it ["she again in multiple parts of the letter acknowledged that this was a debt, acknowledges that she had agreed to repay it." 3TR 300] The Tennessee Supreme Court has held that "The basic definition of 'loan' is an advance of money with an absolute promise to repay." *Lake Hiwassee Dev. Co. v. Pioneer Bank*, 535 S.W.2d 323, 325 (Tenn. 1976)

The words of the trial court that granted the judgment are as follows: "...the court believes that a judgment against Mrs. Longworth should go down in the amount of $193,000, secured by a judgment lien against the Wilnoty Drive house." 3TR 301-302 The court then stated "that the Court believes that a judgment in that amount, secured by that house and that house only." 3TR 302-303 As we read the Memorandum Opinion, those are the only words that the trial court spoke to create the judgment. These words spoken by the court seem to grant an ordinary money judgment, as well they should have, since the court found that Mr. Ammons had loaned Mrs. Longworth the money and that she had promised to repay it. As discussed above, would appear to be an ordinary personal judgment with the added protection of some "security" in the Wilnoty Drive property, but with no prohibition against garnishment or other means of collection. And if this ordinary money judgment is a final judgment, it cannot be altered or amended by the trial court six

years later. In particular, if the judgment is a final judgment it cannot be revised by adding a "no-garnishment" provision.

Counsel has been unable find any precedent where a court has denied an ordinary money judgment where money was lent with a promise to repay and it is admitted that the money is owed. We will add it would be truly extraordinary to deny an ordinary money judgment where, as is the case here, the court found that the obligor herself "acknowledges that this was the debt, acknowledges that she had agreed to repay it and that it would be repaid." Memorandum Opinion, 3TR 300 Under the circumstances, we can find no valid reason why an ordinary money judgment should be denied in the case at bar, especially where the money judgment proves to be the only means of collection, as will be the case here if the attempted lien proves to be non-existent or ineffectual.

7. What Kind of Lien Was the Trial Court Attempting to Create?

We have argued that although the trial court referred to the attempted lien as a "judgment lien," it was not a judgment lien. But if it was not a judgment lien, what kind of lien was it? The name that the trial court used for the lien is of little consequence: "We take it that here, as elsewhere, the law cares little about names. The question is, what was the relation of the parties." *Ebbtide Corp. v. Travelers Ins. Co.*, 2001 WL 856578, at *7 (Tenn. Ct. App. 2001)

As discussed above, by loaning his daughter $193,000, Mr. Ammons saved the day for both his daughter and for her husband. The Wilnoty Drive real estate, that Tamara Longworth paid off with the money that her father loaned her, belonged, not to her, but to her husband, William Longworth. Although it may be true that

Mr. Longworth did not agree to repay the loan, no reasonable person would argue that he was not enriched by Mr. Ammons' generosity, in the amount of $193,000. The loan kept him and his wife from losing their new home and it pumped up his equity in the Wilnoty Drive property by approximately $193,000. The Court found that Tamara Longworth would be unjustly enriched if she got to keep this money without paying it back. The same is obviously true of William Longworth. He got the benefit of Mr. Ammons' generosity just as much as Mrs. Longworth did, if not more.

There is a very satisfactory remedy available to the Court, and that remedy is the equitable lien. The imposition of an equitable lien would be eminently reasonable and just and would satisfy each of the principles that the trial court has established in this cause. First, the imposition of an equitable lien would establish a means whereby Mr. Ammons could satisfy or enforce the judgment, thereby giving him some meaningful relief. Second, the imposition of an equitable lien would not be a money judgment against Mr. Longworth; it would merely be a lien against the Wilnoty Drive property. And third, the Court would retain the discretion to determine when and how the equitable lien might be enforced.

The remedy of equitable lien "closely resembles the remedy of constructive trust in that it vindicates an equitable interest in property to which another person holds legal title." Restatement (Third) of Restitution and Unjust Enrichment §55 (2011) [Restatement] Yet the two remedies are easily distinguishable by their results. Where constructive trust yields ownership of all or part of an identifiable asset,

equitable lien "secures an obligation to pay a money judgment (measured by unjust enrichment) with a lien on an identifiable asset." *Id.* The equitable lien is the appropriate remedy where a defendant has been unjustly enriched by a transaction in which the claimant's assets "are applied to enhance or preserve the value of particular property to which the defendant has legal title." *Id*, §56 The "foreclosure of an equitable lien is subject to such conditions as the court may direct." *Id.* The remedy of equitable lien is "also a means to restrict the claimant's recovery, in cases where restitution via personal liability or constructive trust would exceed limits set §50 or §61." *Id.*

The equitable lien is also appropriate in cases where there is an "Innocent Recipient." An "innocent recipient" is "one who commits no misconduct in the transaction concerned and who bears no responsibility for the unjust enrichment in question." Restatement (Third) of Restitution and Unjust Enrichment §50 (2011)

The equitable lien is one of three principal remedies by which a claimant may claim restitution from property, along with constructive trust and subrogation. Restatement §56 (2011) All three remedies allow the claimant to "assert rights in specific property as an alternative (or a supplement) to a money judgment against the defendant in personam." *Id.* The equitable lien is sometimes described as a subspecies of constructive trust: whereas constructive trust transfers actual ownership of specific property from the holder of legal title to a person with a superior claim, the equitable lien "subjects the holder's property to a security

interest in favor of the claimant" with the liability being secured by an underlying money judgment for unjust enrichment, express or implied. *Id.*

Typically, the claimant who obtains an equitable lien "is able to trace assets into the enhanced value of specific property in the hands of the defendant, such as property that the claimant's funds have been used to improve." Id. (emphasis added) But traditional applications of the remedy are potentially much broader, extending generally to transactions in which it may be inferred that a claimant is to have "recourse to a specific asset or fund for the satisfaction of another's personal liability.' *Id.* Restitution via equitable lien is a "flexible and adaptable remedy, because the court that imposes the lien can establish whatever conditions to its enforcement (or "foreclosure") [that] may be appropriate in the circumstances of the case." Id. §56.

The modern equitable lien is usually employed as a remedy for unjust enrichment, but the traditional justification for the remedy is broader: an equitable lien "is implied and declared by a court of equity out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings." A court that is prepared to wield such broad authority will sometimes use equitable liens "to protect – after the fact – property interests that vulnerable parties have neglected to protect by contract." *Id.*

An equitable lien "is simply a charge upon the property, which charge subjects the property to the payment of the debt of the creditor in whose favor the charge

exists." *Fulp v. Fulp*, 140 S.E.2d 708, 712 (N.C. 1965); Restatement (Third) of Restitution and Unjust Enrichment §26 (2011)

In a constructive trust, equity will treat the claimant as the owner of an asset acquired with the claimant's money, but "the same logic did not resolve the problem presented when the claimant's money was used to enhance the value of an asset the defendant already owned." Restatement, §56 The solution adopted "was that while the restitution claimant did not acquire equitable ownership of the improved property, he was entitled to a lien on it." *Id* The distinction is noted in "countless cases where the claimant's funds have been spent on improvements to real property." *Id.*

An equitable lien "is designed as security for a judicially decreed debt, and it is to be enforced through execution and sale after the defendant has refused to pay the debt." Restatement, §161 Where, however, the person holding the property is not at fault, and where the foreclosure of the lien by a sale of the property would cause a hardship to the holder of the property, "the court will not necessarily order an immediate sale of the property." *Id.* Thus, if a person makes improvements upon the land of another under circumstances entitling him to restitution of the value of the improvements, "the court will not necessarily order an immediate sale of the land to satisfy the claim for the improvements." *Id.* The character of the relief given "will depend on the circumstances." *Id.* The court might direct that the property be mortgaged and that the plaintiff be reimbursed from the proceeds of the mortgage." *Id.* It might under some circumstances "permit the plaintiff restitution out of the

increase of rentals due to the improvements," and might appoint a receiver of the property for this purpose. *Id.*

The equitable lien is specifically recognized by the Tennessee Supreme Court: "Thus it is apparent that, even in the absence of an express contract, an equitable lien may be created by implication, based upon the intention and circumstances of the parties." *Greer v. Am. Sec. Ins. Co.,* 445 S.W.2d 904, 907 (Tenn. 1969) In that case, the Supreme Court stated that "[a]n equitable lien is a right, not recognized at law, to have a fund or specific property, or its proceeds, applied in whole or in part to the payment of a particular debt. It is not an estate or property in the thing itself, nor is it a right to recover the thing; that is, it is not a right which may be made the basis of a possessory action, but is merely a charge upon it." *Id.*

The Tennessee Court of Appeals has similarly recognized that "the doctrine of 'equitable lien' follows closely follows the doctrine of 'subrogation'", observing that they both are "applied in cases where the law fails to give relief and justice would suffer without them." *W. & O. Const. Co. v. IVS Corp.*, 688 S.W.2d 67, 71 (Tenn. App. 1984)

The Tennessee Court of Appeals has also held as follows:

> The term "lien" is used in equity in a broader sense than at law. And although it is difficult to define accurately the term "equitable lien," generally speaking, an equitable lien is a right, not recognized at law, and which a court of equity recognizes and enforces as distinct from strictly legal rights, *to have a fund or specific property, or the proceeds, applied in full or in part to the payment of a particular debt or demand,* a right of a special nature over property which constitutes a charge or encumbrances so that the property itself may be proceeded against in an equitable action, and either sold or sequestered, and its proceeds *or its rents and profits* applied on the debt or demand of the person in whose favor the lien exists, it being a mere floating equity until a

> judgment or decree subjecting the property to the payment of the debt or claim is rendered.
>
> *Shipley v. Metro. Life Ins. Co.*, 158 S.W.2d 739, 741 (Tenn. App. 1941) (emphasis added)

The Supreme Court, in discussing the equitable lien doctrine, has noted that "one of the maxims underlying the doctrine is that equity regards as done that which ought to be done." *Milam v. Milam,* 200 S.W. 826 (Tenn.1918). [as quoted in *In re Estate of Burress*, 2003 WL 238820, at *6 (Tenn. Ct. App. 2003)]

The remedy of an equitable lien would seem to be tailor-made for the case at bar because it would satisfy each of the guiding principles that the Court has established. It would give Mr. Ammons meaningful relief. It would allow a personal judgment against Tamara Longworth, with the security of the Wilnoty Drive real estate. It would not involve a personal judgment against Mr. Longworth, as the trial court wished. But it would be an equitable lien against Mr. Longworth's property, with Mr. Longworth being considered an "innocent beneficiary" of Mr. Ammons' loan. The loan certainly saved Mr. and Mrs. Longworth's new home and increased Mr. Longworth's equity in the "old home" on Wilnoty Drive by approximately $193,000.

As should be apparent from the authorities cited above, an equitable lien is not granted against a *person*, it is granted against an *asset*, such as the Wilnoty Drive real estate. The imposition of an equitable lien against the Wilnoty Drive property would seem to be the most appropriate and just means of granting the relief that the trial court intended in this cause.

The Plaintiff requests the Court to rule that the original judgment was not a final judgment, and to either grant an equitable lien against both Mr. and Mrs. Longworth's interest in the Wilnoty Drive property to secure the sum of $193,000, or to remand for the trial court to consider granting the equitable lien. The remand order would also direct the trial court to further determine the terms of the lien, including the use of a legal description. As stated in the authorities discussed above, the remedy of equitable lien is "flexible and adaptable," and would allow the trial court to establish whatever conditions to its enforcement as the Court may choose. The trial court may or may not choose to order an immediate sale of the property. If the trial court believes that an immediate sale would cause a hardship for Mr. Longworth, the trial court might allow a reasonable period of time for Mr. or Ms. Longworth to discharge the equitable lien, or the trial court might order Mr. Longworth to seek a mortgage on the property and to repay Mr. Ammons from the proceeds. Similarly, the trial court might order Mr. Longworth to pay the rental income that the property generates to Mr. Ammons until the obligation is discharged in full. ["...an equitable lien is a right...which a court of equity recognizes and enforces...to have a fund or specific property, or the proceeds, applied in full or in part payment to the payment of a particular debt or demand, so that the property itself may be proceeded against in an equitable action, and either sold or sequestered, and its proceeds *or its rents and profits* applied on the debt or demand of the person in whose favor the lien exists..." *Shipley v. Metro. Life Ins. Co.*, 158 S.W.2d 739, 741 (Tenn. App. 1941) (emphasis added)]

8. Mere Passage of Time Does Not Convert a Non-Final Judgment into a Final Judgment

In the order dismissing the Plaintiff's recently filed "Motion to Alter, Amend, Revise or Reconsider Judgments or Orders" the trial court stated that the motion in question was "filed presumably pursuant to TRCP 60.02" and that "TRCP Rule 60 specifies that a motion made under its auspices must be made within 'a reasonable time' and in the Court's view, under any reasonable interpretation of 'reasonable time,' a motion filed roughly seven and a half years after the entry of the judgment does not qualify as reasonable." Order, 4TR 492-493 The trial court was at least partially mistaken in stating that the motion was "filed presumably pursuant to TRCP 60.02." The motion as originally filed [3TR 361-368] did not specify the rule under which it was filed, but in his Reply Brief [4TR 483] the Plaintiff clarified that the motion was filed pursuant to Rule 54 as to any judgment that was considered non-final, pursuant to Rule 59 as to any ruling that was considered final, and under Rule 60.02, or "any other rule or principle cognizable under Tennessee law to the extent appropriate. Plaintiff's Reply Brief, 4TR4 483. Notwithstanding this request, the trial court's order indicates that it considered the motion only under Rule 60.02, and did not consider Rule 54 or 59.

Under Rule 60.02 the question would be, as the trial court stated, whether the motion was made within a reasonable time. But under Rule 54 there is no such requirement. If the original judgment was not a final judgment, the mere passage of time would not convert it into a final judgment. See *Cooper v. Tabb*, 347 S.W.3d 207, 219 (Tenn. Ct. App. 2010) ("Moreover, because the order granting a new trial is

not a final order, Rules 59 and 60 of the Tennessee Rules of Civil Procedure, and the time constraints contained in these rules, are not applicable.... Therefore, we cannot say that the mere passage of time deprived the trial court of jurisdiction to reconsider its order granting Cooper a new trial.") See also *Shah v. Regions Bank*, ___ So.3d ___, 2018 WL 3484500, at *2 (Fla. Dist. Ct. App. July 20, 2018) (not released for publication; until released for publication this opinion is subject to revision or withdrawal) ("Based on the allegation that the final judgment is void, it is clear that the court did not lose jurisdiction by the passage of time. Thus, the trial court erred in denying the motions on the basis that it lacked jurisdiction to consider them.") The question with regard to the motion to revise the original judgment is simply whether it resolved all claims of all parties, leaving "nothing else for the trial court to do." The mere passage of time does not turn a non-final judgment into a final judgment.

9. Finality of the Order Quashing Garnishment

Besides asking the Court to rule that the original judgment was not a final judgment, the Plaintiff also asks this Court to review the trial court's more recent ruling quashing his attempted garnishment, entered on Dec. 20, 2017. (3TR 324) This Court, in its Order entered during the pendency of this appeal, appears to have ruled that this order is a final order and therefore appealable. In that order this Court stated that the Plaintiff/Appellant's motion filed in this court was "not well-taken as both the judgment entered on October 26, 2011, and the order entered on May 4, 2018, were final appealable judgments for purposes of Rule 3."

The Plaintiff's Motion to Alter or Amend the order quashing the garnishment was filed within 30 days of the entry of the order quashing garnishment. (3TR 361) In the Motion to Alter or Amend, the Plaintiff specifically requested the trial court to alter or amend the order quashing the garnishment by setting it aside and allowing garnishment with a further ruling that the judgment was "an ordinary judgment that may be executed by any means allowed by law, including garnishment of her earnings...." 3TR 361, 364-368 (specifically including ¶8 and ¶11 and prayer for relief ¶3-5) Without specifically addressing this aspect of the Motion to Alter or Amend, the trial court denied the Motion to Alter or Amend in its entirety by the order entered May 4, 2018 (4TR 492). The trial court stated that the Motion to Alter or Amend [apparently in its entirety] was "filed presumably pursuant to TRCP 60.02" and that a "motion filed roughly seven and a half years after the entry of the judgment does not qualify as reasonable." Order, 4TR 492-493 But, at least with respect to this aspect of the Motion to Alter or Amend, the motion was not made "roughly seven and a half years after the entry of the judgment"; it was made within 30 days after the entry of the judgment. The Plaintiff then filed his Notice of Appeal within 30 days of the entry of the Order denying the Motion to Alter or Amend. 4TR 497 Then, as mentioned just above, this Court, in its Order entered Sept. 20, 2018, during the pendency of this appeal, made the preliminary ruling that the trial court's May 4, 2018, Order (4TR 492) (which included the denial of the motion to alter or amend the order quashing the garnishment) was a final order (and therefore suitable for appeal).

10. Conclusion

For the reasons stated herein, the Plaintiff requests relief as follows:

1. That the Court determine that the original judgment in this cause (3TR 295) was not a final judgment, and that the Court then direct the trial court to enter an order revising the original judgment to grant an equitable lien against any and all interest that either of the Defendants, William C. Longworth and wife Tamara Longworth, may have in the Wilnoty Drive property, in the amount of $193,000, with all necessary terms conditions of the equitable lien, with a legal description of the property subject to the equitable lien.

2. That the Court determine that the original judgment in this cause constituted an ordinary personal money judgment in favor of the Plaintiff, John Thomas Ammons, against the Defendant Tamara Longworth, in the amount of $193,000, with no prohibition against garnishment or other means of execution or enforcement of the judgment, and to reverse the trial court's Order quashing the Plaintiff's attempted garnishment [3TR 324], all with the result of allowing the Plaintiff any legal means of enforcing or collecting the judgment.

3. That the Court generally grant any and all relief requested in the Plaintiff's Motion to Alter, Amend, Revise or Reconsider Judgments or Orders (3TR 361), and to remand for further proceedings.

4. That the Court grant general relief.

Respectfully submitted,

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Certificate of Service

The undersigned certifies that a copy of the foregoing has been served on the parties listed below, as follows:

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